REMARKS

The restriction/election requirement based upon 35 U.S.C. §121 and dated 3 July 2006, has been considered. The Examiner contends that the application contains claims directed to eighteen (18) distinct inventions.

Applicant respectfully traverses the restriction/election requirement because restriction practice based upon 35 U.S.C. §121 is not applicable to the instant application. The instant application is a national stage application, filed under 35 U.S.C. §371, of an international application. MPEP §1893.03(d) explicitly states that: "Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371." The introduction to MPEP §800 (wherein the bases for the restrictions are cited) further states that:

> This chapter is limited to a discussion of the subject of restriction and double patenting under Title 35 of the United States Code and Title 37 of the Code of Federal Regulations as it relates to national applications filed under 35 U.S.C. 111(a). The discussion of unity of invention under the Patent Cooperation Treaty Articles and Rules as it is applied as an International Searching Authority, International Preliminary Examining Authority, and in applications entering the National Stage under 35 U.S.C. 371 as a Designated or Elected Office in the U.S. Patent and Trademark Office is covered in Chapter 1800.

MPEP §801. Applicant submits that the instant national stage application should be subject to unity of invention practice and not restriction practice. Thus, Applicant submits that the instant restriction/election requirement is improper and accordingly requests that it be withdrawn.

Moreover, the Office Action fails to satisfy the requirements for making a proper restriction. For example, MPEP §806.05(h) indicates that inventions may be shown to be distinct if it can be shown that: "(A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process." However, the MPEP goes on to state that the burden is on the examiner to provide an example. No such example has been provided. The Office Action merely asserts that "In the instant case the obvious method of use of the apparatus of claim 11 is something different form any of Inventions 1 through 9." No example of

that "something different" has been presented. Thus, even if restriction practice were applicable to the instant application, the restriction would be improper as the requisite evidence has not been provided.

As restriction practice does not apply to the instant application and the instant Office Action makes no assertion as to unity of invention, the instant restriction and election requirement is improper and should be withdrawn.

Reconsideration and withdrawal of the election requirement is respectfully requested. If the Examiner has any questions or comments, a telephone call to Applicant's representative at the number provided below is invited.

Respectfully submitted,

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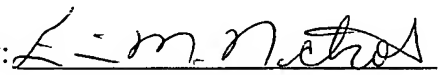
By: 
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